

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,
Plaintiff and Counterclaim-Defendant,
v.
LAWRENCE D. LIEBER,
Defendant and Counterclaimant.

Case No.: 1:21-cv-7955-LAK
and consolidated cases
21-cv-7957-LAK and 21-cv-7959-LAK

Hon. Lewis A. Kaplan

**LOCAL RULE 56.1 STATEMENT OF
MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE
TRIED IN SUPPORT OF MOTION BY
MARVEL CHARACTERS, INC. FOR
SUMMARY JUDGMENT**

MARVEL CHARACTERS, INC.,
Plaintiff and Counterclaim-Defendant,
v.
KEITH A. DETTWILER, in his capacity as
Executor of the Estate of Donald L. Heck,
Defendant and Counterclaimant.

MARVEL CHARACTERS, INC.,
Plaintiff and Counterclaim-Defendant,
v.
PATRICK S. DITKO, in his capacity as
Administrator of the Estate of Stephen J.
Ditko,
Defendant and Counterclaimant.

Pursuant to Local Civil Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York (“Local Rules”), Plaintiff Marvel Characters, Inc. (“MCI”), by and through its undersigned counsel, respectfully submits the following statement of material facts as to which there is no genuine issue to be tried in support of its motion for summary judgment.

THE PARTIES

1. The companies now known as “Marvel” were preceded by numerous predecessors-in-interest doing business as the Marvel Comics Group, including: Martin and Jean Goodman, their Magazine Management Company partnership, and their wholly-owned entities Atlas Magazines, Inc., Canam Publisher Sales Corp., Non-Pareil Publishing Corp., Vista Publications, Inc., and Magazine Management Company, Inc. (New York); Perfect Film & Chemical Corp. (“Perfect”) (later renamed as Cadence Industries Corp. (“Cadence”)); Magazine Management Company, Inc. (Delaware); and Marvel Entertainment Group, Inc. (collectively, “Marvel”). See Declaration of Eli Bard (“Bard Decl.”) ¶ 2; Bard Decl., Ex. 1 (reflecting incorporation and later dissolution of Marvel entities in existence during the early 1960s and their common ownership by Martin Goodman); Bard Decl., Ex. 2 (showing Martin and Jean Goodman’s ownership of Marvel); Bard Decl., Ex. 4 (same); Bard Decl., Ex. 3 (listing various “active corporations and magazines”); Bard Decl., Ex. 5 at 2-3 (reporting on Magazine Management Company, a “[p]artnership formed 1942” that acts as “the managing organization for the various publishing corporations in which Martin Goodman is a principal or a stockholder”); Bard Decl., Ex. 6 at 3 (“Magazine Management Company . . . renders administrative services to and exercises the over-all control over” other Goodman-owned publishing corporations); Bard Decl., Ex. 7 at 5 (“Martin Goodman . . . formulates, directs and controls the acts and practices of each corporate respondent either directly or through the

partnership, Magazine Management Company"); Bard Decl., Ex. 8 at 5-6 (A "group of commonly owned and controlled corporations collectively known as the Marvel Comics Group" published comic books "frequently includ[ing] material concerning characters featured in other publications of the Group"); Bard Decl., Ex. 10 at 2, 9 (June 28, 1968 agreement for sale of the Goodmans' Marvel Comics business to Perfect, providing that all then-existing copyrights be assigned to Perfect (the "June 28, 1968 Sale")); Bard Decl., Ex. 11 at 3 (December 7, 1978 acknowledgment of assignment between Martin and Jean Goodman and Perfect's successor-in-interest, Cadence, affirming, pursuant to the June 28, 1968 Sale, assignment of all "copyrights and renewals and extensions of copyrights," including all publications listed on Schedule B annexed thereto (including those listed in the termination notices (the "Works"))); Bard Decl., Ex. 9 at 2 ("Cadence Industries Corporation admits that its Marvel Comics Group division is engaged in the business of magazine publishing"); Bard Decl., Ex. 12 at 2-3 (January 1, 1972 assignment from Cadence's wholly owned subsidiary, Magazine Management Co., Inc. (Delaware) to Cadence of all copyrights relating to "its Marvel Comics Group Division or the comics business"); Bard Decl., Ex. 13 at 2-3 (December 29, 1986 assignment from Cadence to MEG of all "copyrights relating to [Cadence's] Marvel Comics Group business," including all publications listed on Schedule A annexed thereto (including the Works)); Bard Decl., Ex. 14 (November 20, 1986 purchase agreement between Cadence Industries Corporation and New World Pictures, Ltd.); Bard Decl., Ex. 15 (November 4, 1988 acquisition agreement between New World Entertainment, Ltd. and Andrews Group Incorporated relating to MEG); Bard Decl., Ex. 16 (September 1, 1995 assignment from MEG to MCI of all copyrights "in its comics books and comic book-related works," including all publications listed on Schedule A annexed thereto (including the Works)); Declaration of Molly M. Lens ("Lens Decl."), Ex. 75 (Goodman certifying as president of various

publishing corporations that he, Jean Goodman, and said corporations conducted business as “Marvel”); Lens Decl., Ex. 76 (Goodman certifying as president of various publishing corporations that he, Jean Goodman, and said corporations conducted business as “Marvel Comics Group”); Lens Decl., Ex. 18 72:25-73:11 (Goodman discussing his publishing entities, explaining that “each corporation st[ood] on its own” but he “own[ed] them either completely or [his] wife may [have] own[ed] some stock in some of them”); Lens Decl., Ex. 13 11:24-12:3 (“It had many different names over the years, and it finally became Marvel.”); Lens Decl., Ex. 6 9:6-10:1 (“As far as I know, Marvel Comics Group did the comic books and Magazine Management was the overall company that did all the other magazines. They had all different kinds of magazines.”); Lens Decl., Ex. 6 6:13-25 (“[Marvel was] bought by a company called Perfect Film and Chemical which later became Cadence Industries and that was later sold to New World and then it ended up with where it is now.”); *see also* Lens Decl., Ex. 8 16:11-20; Lens Decl., Ex. 8 17:16-25; Lens Decl., Ex. 4 83:10-13; Lens Decl., Ex. 8 15:2-8; Lens Decl., Ex. 17 3:18-4:9.

2. Steven J. Ditko (“Ditko”) was an artist who worked for Marvel from approximately 1955 to 1965, including a period from 1963 to 1965 where Ditko worked nearly exclusively at Marvel, before working again for Marvel from 1979 into the 1990s.

Lens Decl., Ex. 45 at 3; Lens Decl., Ex. 44 at 3; Lens Decl., Ex. 25; Lens Decl., Ex. 15 19:1-10; Lens Decl., Ex. 39 at 5; Lens Decl., Ex. 2 92:11-20; Declaration of Roy Thomas (“Thomas Decl.”)

¶ 19.

3. **Between 1962 and 1965 (the “Time Period”),¹ Ditko contributed to the creation of many comic book stories and characters appearing in Marvel comic books published during the Time Period, including the Works.** Lens Decl., Ex. 63.

4. **Following his June 29, 2018 death, Ditko’s brother Defendant Patrick S. Ditko was appointed administrator of his estate.²** Lens Decl., Ex. 67 at 2; Lens Decl., Ex. 66; Lens Decl., Ex. 62 ¶ 6.

THE TERMINATION NOTICES

5. **Marvel filed copyright registrations for each of the Works with the U.S. Copyright Office in the name of the Marvel entity that published the work.** Lens Decl., Ex. 24A-E.

6. **Marvel subsequently filed renewal copyright registrations for each of the Works, with each such renewal listing a Marvel entity as the renewal claimant and proprietor of the copyright in the subject work as a work made for hire.** Lens Decl., Ex. 24A-E.

7. **MCI acquired copyright title for the Works from Marvel through a series of copyright assignments.** Bard Decl., Ex. 10; Bard Decl., Ex. 11; Bard Decl., Ex. 12; Bard Decl., Ex. 13; Bard Decl., Ex. 16.

8. **Between June 1 and July 16, 2021, Defendant served four notices on MCI, The Walt Disney Company, and other entities purporting to terminate alleged assignments of the**

¹ Unless otherwise stated, all factual statements herein relate to the Time Period only. Note that due to a lag between when contributions were made and when a comic book was ultimately published, some Works were published in 1966 even though Ditko stopped working for Marvel in late 1965. *See* Thomas Decl. ¶ 18.

² Unless otherwise noted, all references to “Ditko” herein shall refer to Steve Ditko and Defendant Patrick S. Ditko shall be referred to as “Defendant.”

copyrights in the Works (the “Termination Notices”). Lens Decl., Ex. 63; Lens Decl., Ex. 62 ¶ 15.

**MARVEL’S PUBLISHERS AND EDITORIAL STAFF DROVE
ITS COMIC-CREATION PROCESS FROM IDEATION TO DISTRIBUTION**

Marvel’s Publishers and Editors

9. **Martin Goodman was Marvel’s publisher from 1939 until 1972.** Bard Decl., Ex. 7 at 5; Lens Decl., Ex. 2 18:10-13; Lens Decl., Ex. 2 81:10-12; Lens Decl., Ex. 7 219:11-220:11; Lens Decl., Ex. 12 60:22-61:4; Lens Decl., Ex. 13 11:18-23; Lens Decl., Ex. 13 16:14-19; Lens Decl., Ex. 15 12:19-21; Lens Decl., Ex. 4 99:6-10; Lens Decl., Ex. 2 32:8-12.

10. **Stan Lee was Marvel’s editor (a/k/a editor-in-chief) from approximately 1942 until 1972—when he was promoted to president and publisher of Marvel. Lee also wrote stories for Marvel on a freelance basis, including during the Time Period.** Lens Decl., Ex. 13 14:2-17; Lens Decl., Ex. 6 7:18-8:10; Lens Decl., Ex. 6 12:1-4; Lens Decl., Ex. 15 11:21-13:10; Lens Decl., Ex. 2 32:8-12; Lens Decl., Ex. 6 40:14-20; Lens Decl., Ex. 15 17:2-8; Lens Decl., Ex. 5 63:1-18; Lens Decl., Ex. 2 290:17-291:5; *see also* Lens Decl., Ex. 22 at 3; Lens Decl., Ex. 74 at 3.

11. **Roy Thomas joined Marvel in 1965 as a staff writer, quickly transitioned to working as an editorial assistant to Stan Lee, was promoted to assistant editor in approximately 1967, and was promoted to editor-in-chief from 1972 to 1974. Thomas also wrote stories for Marvel on a freelance basis, including during the Time Period.** Lens Decl., Ex. 2 271:11-272:19; Lens Decl., Ex. 16 99:6-11; Lens Decl., Ex. 2 26:11-27:22; Lens Decl., Ex. 2 61:7-15; Lens Decl., Ex. 2 64:17-25; Lens Decl., Ex. 21.

The Marvel Method for Creating Comics

12. **During Stan Lee's tenure as editor, Marvel developed what became known as the Marvel Method for creating comic book stories.** Lens Decl., Ex. 13 20:11-21:25; Lens Decl., Ex. 11 218:14-219:16; Lens Decl., Ex. 9 at 47:20-48:8.

13. **Under the Marvel Method, Stan Lee generally originated characters and plot ideas for Marvel comics.** Lens Decl., Ex. 48 at 2 (Ditko admitting that "Stan provided the plot ideas"); Lens Decl., Ex. 2 48:2-22 (Thomas affirming prior statements that "Stan was really the guy who generated the ideas" and that he did not "push[] us to come up with new characters in the early days, except for villains"); Lens Decl., Ex. 3 97:8-98:25 (Marvel writer Larry Lieber (and defendant in consolidated action) testifying that "Stan would give me a one-page plot outline for a story, I would write the script, [and] return it Stan"); Lens Decl., Ex. 9 13:22-14:4 (Lieber confirming that Stan Lee "came up with the ideas for the characters that would be in the story"); Lens Decl., Ex. 9 12:19-13:5 (Lieber testifying that "my brother [Stan Lee] made up the plot and gave me a synopsis" and that "all" story ideas "came from Stan Lee"); Lens Decl., Ex. 13 35:5-10 (Lee confirming that his "role" was "to come up with the idea" for new comic books or stories); Lens Decl., Ex. 13 35:23-36:6 (Lee testifying that "[i]n the 60s, the ideas for the new characters originated with [him] because that was [his] responsibility."); Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel's basic "formula" was to "mix fantasy with realism" with characters that "are a little different, . . . sort of like continuing soap operas"); Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel "juxtapos[ed] . . . bigger-than-life problem[s]" with "the very simple home life and family life"); Lens Decl., Ex. 71 at 20:17-23:23 (Lee explaining how Marvel "juxtapos[ed] [] the supernatural with the very mundane, every day type of existence"); *see also* Lens Decl., Ex. 10 335:10-336:11; Lens Decl., Ex. 38 at 5; Lens Decl., Ex. 43 at 2.

14. After Lee conceived of a story idea, Lee then assigned a pencil artist (“penciller”) to the comic and generally provided a “plot” or “synopsis” outlining the key elements of the story he wanted the penciller to draw. Lens Decl., Ex. 48 at 2 (Ditko admitting that “Stan provided the plot ideas”); Lens Decl., Ex. 46 at 3 (Ditko explaining that Stan Lee “create[ed]” the “Spider-Man” name and wrote the original “synopsis for the artist [(i.e., Ditko)]”); Lens Decl., Ex. 13 20:11-21:25 (Lee testifying about the Marvel Method and, using Ditko as an example, explaining that he might say: “Look, Steve, I don’t have time to write your script for you, but this is the idea for the story. I’d like this fill in, and I’d like this to happen, and in the end the hero ends by doing this. You go ahead and draw it any way you want to, as long as you keep to that main theme. . . . And when you finish drawing this one, I will put in all the dialogue and the captions.”); Lens Decl., Ex. 11 218:14-219:16 (Thomas testifying that, under the Marvel Method, Stan Lee “would come up with the idea for the plots . . . [a]nd he simply would give those plots to the artists, who would then draw the story, break them down into pictures, expanding them, whatever needed to be done to break them down into pictures”); *see also* Lens Decl., Ex. 2 28:8-21; Lens Decl., Ex. 9 at 47:20-48:8; Lens Decl., Ex. 69; Lens Decl., Ex. 70.

15. Once the penciller turned in his work, Lee would review the artwork and consider any changes, additions, or corrections. Lens Decl., Ex. 48 at 2 (Ditko describing the process of Stan Lee reviewing his work); Lens Decl., Ex. 13 20:11-21:25 (Lee testifying about the Marvel Method); Lens Decl., Ex. 11 218:14-219:16 (Thomas explaining the Marvel Method).

16. Lee and the other Marvel editors would then direct the pages through the office, beginning with the addition of the writer’s dialogue and captions (typically written by Lee or Thomas). Lens Decl., Ex. 7 201:24-203:16 (Thomas testifying about the process of “trafficking [pages] through the office” at Marvel); Lens Decl., Ex. 2 135:8-14, 125:9-17 (similar);

Lens Decl., Ex. 11 218:14-219:16 (Thomas testifying that, after artists turned in their penciled pages, Lee “would dialogue it, which means [adding] the dialogue and captions”); Lens Decl., Ex. 13 20:11-21:25 (Lee testifying to the same).

17. Marvel would send the pages to an inker, who would go over the penciled drawings in ink, and to a letterer, who would add the dialogue balloons and captions in ink

Lens Decl., Ex. 2 129:10-132:8; Lens Decl., Ex. 13 31:23-33:12.

18. After the lettering was finished, Marvel would proofread the pages and then provide them to a colorist to add color to the pages. Lens Decl., Ex. 2 132:9-133:10; Lens Decl., Ex. 2 134:9-135:7; Lens Decl., Ex. 13 31:23-33:12.

19. Once the pages were colored, Marvel would send them to the printer to be printed for publication. Lens Decl., Ex. 13 31:23-33:12; Lens Decl., Ex. 10 384:22-385:11; Lens Decl., Ex. 13 42:10-20.

20. Marvel freelancers typically had no contact with other freelancers working on the same comic book, as it was Lee and other Marvel staff that coordinated this process, not the freelancers. Lens Decl., Ex. 57 at 3-4 (Ditko writing that “[o]nce I turned in the inked pages, I never knew who edited them or what, how anything was changed, added—sound effects, etc. Who, why changes, different cover, etc. Once I did the job, turned it in, got paid, my involvement ended. It was all ancient history.”); Lens Decl., Ex. 3 141:8-13 (Lieber testifying that he could not recall “ever hav[ing] contact” with other contributors to a work after submitting his script); Lens Decl., Ex. 3 299:13-23 (Lieber explaining that he did not get to select the artists, letterers, or colorists for his scripts); Lens Decl., Ex. 3 300:4-18 (Lieber confirming that, after he turned in his work, he did not have “further communication or contact with anybody except, perhaps, with Stan” and that “[t]he next time [he] . . . knew anything about it is when it came out, you know, in the

comic book form"); Lens Decl., Ex. 9 17:13-19 (Lieber testifying that he did not "have any contact with the story after [he] turned it in" and never "ha[d] discussions with the artists about the stories").

21. To keep comic book production on schedule, Marvel imposed deadlines on its freelance writers and artists. Lens Decl., Ex. 13 42:10-20 (Lee testifying that "[e]very strip had a deadline, because these books had to go out every month. And it was very important that the deadline be met. Because if a book was late, we had already paid the printer for that press time. And if the book wasn't delivered in time, we still had to pay the printer. So it was a total loss to us. So the deadlines were very important. And the artists always knew this has to be delivered by thus-and-such a date."); Lens Decl., Ex. 10 384:22-385:11 (Lee testifying that it was part of his job as editor-in-chief to set deadlines for the artists); Lens Decl., Ex. 72 at 4 (recalling Ditko toiling at his artist's desk in the early 1960s "tortured by [] deadlines"); Lens Decl., Ex. 73 at 3 (Ditko noting that Kirby was "buried under work" and needed to work fast "to keep up with the assignments Lee was throwing at him"); *see also* Lens Decl., Ex. 4 94:6-21; Lens Decl., Ex. 2 154:9-155:25; Lens Decl., Ex. 2 333:8-16; Lens Decl., Ex. 12 59:22-60:21; Lens Decl., Ex. 7 218:2-16; Lens Decl., Ex. 3 266:11-12; Lens Decl., Ex. 3 125:5-13; Lens Decl., Ex. 9 14:9-25.

22. Marvel's editors, including Stan Lee and Roy Thomas, supervised the creation of Marvel's comics subject only to Martin Goodman, who had ultimate authority to supervise and direct the creation of all Marvel comic books. Lens Decl., Ex. 2 17:8-18:13 (Thomas testifying that "subject to the publisher, [Lee] was in charge of everything. He oversaw the writing, he oversaw the artists and the art that came in. You know, everything went through him with the help of the production manager in particular."); Lens Decl., Ex. 2 24:17-23 (Thomas testifying how Marvel production manager Sol Brodsky "would call a freelancer in . . . to keep an

eye on him to make sure he finished the job on deadline or . . . had something that had to be corrected or changed"); Lens Decl., Ex. 2 37:10-39:6 (Thomas testifying that when he became editor-in-chief, he was "in charge of, you know, all the artists, the writers, the colorists, the letterers and so forth"); Lens Decl., Ex. 13 16:8-19 (Lee confirming that he would "give instructions to the artists as to how [he] wanted the story to go" and that it was his "responsibility" to oversee "the creative editorial aspects of the comic books that were created"); Lens Decl., Ex. 12 67:16-68:6 (Thomas testifying that Lee "decided which artist would do a cover for a particular issue[,] . . . they were reviewed by Stan, . . . then they were all reviewed eventually by Martin Goodman as publisher"); Lens Decl., Ex. 13 44:4-17 (Lee testifying that because "we considered the covers the most important part of the book," he "spent a lot of time on" their look and layout); Lens Decl., Ex. 13 16:3-19 (Lee testifying that he would "give instructions to the artists as to how [he] wanted the story to go" and "oversaw . . . creative editorial aspects of the comic books that were created, . . . because [he] had to answer to the publisher, Martin Goodman, and he had to be happy with what I was doing"); Lens Decl., Ex. 4 97:7-9 (Lee testifying that comic book production "was [his] responsibility, the whole thing"); Lens Decl., Ex. 4 93:23-94:5 (Lee testifying that he supervised Marvel's writers and artists); Lens Decl., Ex. 2 80:24-81:12 (Thomas testifying that "[s]ubject to the publisher, [Lee had] complete authority" over artwork in Marvel comics); Lens Decl., Ex. 2 125:18-126:1 (Thomas testifying that Lee "was always the ultimate authority unless Martin Goodman stepped in, and that was mostly on covers"); Lens Decl., Ex. 7 219:11-220:11 (Thomas testifying that "the ultimate say, as far as I know, was the publisher, . . . Martin Goodman"); Lens Decl., Ex. 13 97:8-11 (Lee testifying that he "couldn't do any book unless Martin approved of it"); Lens Decl., Ex. 4 124:19-125:4 (Lee testifying that "[i]t was always [Goodman's] decision" as to what to publish, and "he exercised the authority ultimately to publish the last edition of 'Amazing

Fantasy”); Lens Decl., Ex. 4 124:3-18 (Lee testifying that he “loved” the “Amazing Fantasy” books but “Mr. Goodman decided to cancel them because they weren’t selling”); Thomas Decl. ¶¶ 7-8 (“As part of [Marvel’s] established framework [for creating comics in the 1960s], Stan Lee supervised and directed Marvel’s comic book-creation process subject only to Martin Goodman”); *see also* Lens Decl., Ex. 55 at 4; Lens Decl., Ex. 59 at 3.

**DITKO—LIKE OTHER MARVEL FREELANCERS—WORKED
AT MARVEL’S INSTANCE DURING THE TIME PERIOD**

Ditko Worked Under Marvel’s Direction and Supervision

23. **Marvel assigned Ditko, like other freelancers, to contribute to specific Marvel comic books and could reassign him to different comics when it deemed it necessary or appropriate to do so.** Lens Decl., Ex. 48 at 3 (Ditko admitting that he “was given the job of drawing Spider-Man” but could not speak to “[w]hy, exactly”); Lens Decl., Ex. 51 at 3 (Ditko explaining that, “[a]s a freelancer, [his] focus had to be on what is next, what has to be done,” as “[t]he last job is history”); Lens Decl., Ex. 54 at 4 (Ditko acknowledging that, “[s]ince [he] was a freelancer, Stan Lee could have taken [him] off S[pider]-M[an] anytime he wanted—he did it for a S[pider]-M[an] story pencilled by Jack Kirby”); Lens Decl., Ex. 2 27:19-28:7 (Thomas testifying that his “responsibilities as a freelance writer” were “[j]ust to write whatever Stan told [him] to write”); Lens Decl., Ex. 2 56:2-57:7 (Thomas testifying that Marvel artists did not “have the ability to select which comics they were going to work on” or “the ability to select which artists, letterers, or colorists they were going to be working with” during the Time Period); Lens Decl., Ex. 12 56:16-18 (Thomas confirming that it was Stan Lee who “decided which writer and artist would work on a particular comic book or issue”); Lens Decl., Ex. 2 148:22-151:25 (Thomas testifying about why freelancers might be removed from certain comic books, including for “lateness, undependability,” or the editor’s decision that “they just weren’t doing the right job, or even if

they were okay . . . [that] a little bit of musical chairs might get us a better arrangement of people”); *see also* Lens Decl., Ex. 2 88:17-89:13, 131:8-19, 145:23-148:20, 164:3-9; Lens Decl., Ex. 12 58:10-13, 58:24-59:5, 59:6-21; Lens Decl., Ex. 6 41:14-24; Lens Decl., Ex. 15 16:8-19; Lens Decl., Ex. 42 at 6; Lens Decl., Ex. 53 at 2; Lens Decl., Ex. 13 14:5-8, 23:18-21; Lens Decl., Ex. 3 119:5-11, 138:18-24, 139:17-140:2, 140:8-11, 224:5-10, 224:15-23, 241:25-242:14; Lens Decl., Ex. 9 14:5-8, 110:21-24.

24. Marvel generally provided Ditko, like other freelancers, with a plot or synopsis, which could be written or oral, that outlined the key elements of the story it wanted penciled. Lens Decl., Ex. 48 at 2 (Ditko admitting that “Stan provided the plot ideas”); Lens Decl., Ex. 46 at 3 (Ditko explaining that Stan Lee “create[ed]” the “Spider-Man” name and then wrote the original “synopsis for the artist [(i.e., Ditko)]”); Lens Decl., Ex. 2 28:8-21 (Thomas describing the plotting process); Lens Decl., Ex. 13 20:11-21:25 (Lee testifying about the same); Lens Decl., Ex. 9 at 47:20-48:8 (Lieber testifying that Stan Lee “would discuss a story or a plot with the artist and the artist . . . would lay it out and draw it with enough knowledge about what the story is and leave room for dialogue to come later”); Lens Decl., Ex. 69; Lens Decl., Ex. 70; Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel comics were “sort of like continuing soap operas”); *see also* Lens Decl., Ex. 11 218:14-219:16; Lens Decl., Ex. 3 113:21-114:17, 118:24-119:4, 123:11-124:8, 124:16-125:4, 222:16-23; Lens Decl., Ex. 9 12:19-13:5.

25. Marvel tasked Ditko, like other freelancers, with proposing new characters as part of his assignment, subject to the ultimate discretion of Marvel. Lens Decl., Ex. 13 54:16-56:9 (Lee testifying that it “was part of what [an artist’s] assignment was” to “introduce . . . new characters in the stories”); Lens Decl., Ex. 13 72:21- 73:23 (Lee testifying that “[t]he artist in every strip always creates new characters to flesh out the strip and to make the characters living in the

real world,” although such additions were subject to the approval of Lee and publisher Martin Goodman); Lens Decl., Ex. 13 79:3-19 (Lee testifying that it would be the responsibility of “the Editor or the Publisher” to “make the decision to take [a new, minor] character and make him or her a separate character for a new comic”); Lens Decl., Ex. 12 55:4-15 (Thomas confirming that artists would sometimes “come up with ideas for new characters,” and that it was indeed “part of the artist’s assignment . . . to introduce new characters into a comic book series” if it “would further the plot”); *see also* Lens Decl., Ex. 12 65:13-66:7.

26. After Ditko submitted his assignment, a Marvel editor would review the penciled pages and, as appropriate, discuss changes, additions, or corrections—like Marvel did with other freelancers. Lens Decl., Ex. 48 at 2 (Ditko explaining that he and Stan Lee “would go over the penciled story/art pages” together and discuss changes, additions, or corrections to them); Lens Decl., Ex. 29 (original art for *Amazing Fantasy* #15 showing editorial comments in the margins from Lee to Ditko on Spider-Man panels); Lens Decl., Ex. 2 126:2-127:12 (Thomas testifying that Lee would review the artwork pages submitted by assigned artists and that, as editor, “it was his job to supervise”— “[i]f something went wrong, the publisher wasn’t going to blame . . . the artist, he was going to go to Stan Lee”); Lens Decl., Ex. 12 67:16-68:6 (Thomas testifying that Lee, and then Goodman, would review all covers before they were finalized); Lens Decl., Ex. 3 170:18-21 (Lieber testifying that Lee “had to approve the plot and the artwork and the other things and – before it went to the engraver”); Lens Decl., Ex. 6 39:2-24 (Lee testifying about the supervisorial role of Marvel’s art director and editor, including that it was the art director’s role to “look[] over the artwork and sa[y], ‘Gee, I think that ought to be a closeup instead of a long shot or it is a little hard to understand what he is doing, can you clarify that panel,’” and generally

“discuss the artwork with the artist”); *see also* Lens Decl., Ex. 13 20:11-21:25; Lens Decl., Ex. 11 218:14-219:16; Lens Decl., Ex. 9 16:20-17:4.

27. Marvel could decide to not publish material that it had assigned to Ditko or other freelancers, but, to the extent it did, typically did so only in connection with comic book covers (a top priority for Marvel’s publisher Martin Goodman), not interior pages. Lens Decl., Ex. 54 at 4 (Ditko remarking that he “got more out of working for” Charlton Comics than for Marvel because of its “picky editors, ‘corrections’ etc.”); Lens Decl., Ex. 48 at 5 (Ditko discussing Marvel’s rejection of his Spider-Man cover and reassignment of the task to Jack Kirby); Lens Decl., Ex. 47 at 2 (same); Lens Decl., Ex. 30 at 2 (“*Amazing Fantasy* #15 unused cover art by Steve Ditko”); Lens Decl., Ex. 13 22:11-23:19 (Lee confirming that he “always maintain[ed] the ability to edit and make changes or reject what the other writers or artists had created”); Lens Decl., Ex. 2 286:15-23 (Thomas testifying that Goodman’s “main concern was the covers” and that he was known to scrutinize them); Lens Decl., Ex. 12 67:16-68:6 (Thomas testifying that Stan Lee would review the covers before publication, and then “they were all reviewed eventually by Martin Goodman as publisher”); *see also* Lens Decl., Ex. 2 161:8-20; Lens Decl., Ex. 13 44:4-17; Lens Decl., Ex. 41 at 4; Lens Decl., Ex. 49 at 3; Thomas Decl. ¶¶ 20-21.

28. Marvel could require Ditko, like other freelancers, to make changes to his work (or could make the changes directly), and sometimes did so. Lens Decl., Ex. 48 at 2 (Ditko explaining that he and Stan Lee “would go over the penciled story/art pages” together and discuss changes, additions, or corrections to them); Lens Decl., Ex. 53 at 3 (Ditko writing about a Spider-Man cover in which he “had S[pider]-M[an] leaping toward the Molten Man” but “S[pider]-M[an] was changed to leaping across the Molton Man and off the cover”); Lens Decl., Ex. 54 at 4 (Ditko complaining about Marvel’s “picky editors” and their “corrections”); Lens

Decl., Ex. 29 (original art for *Amazing Fantasy* #15 showing editorial comments in the margins from Lee to Ditko on Spider-Man panels); Lens Decl., Ex. 2 44:22-45:5 (Thomas testifying that he “observe[d]” Marvel editors “actually making changes to work that had been done by freelance writers and artists,” in terms of “both . . . lettering and artwork”); Lens Decl., Ex. 2 127:17-20 (Thomas confirming that “Stan Lee ha[d] the ability to just have changes made to artwork without the artist’s involvement”); Lens Decl., Ex. 2 133:11-13 (similar); Lens Decl., Ex. 2 24:17-23 (Thomas testifying how Marvel production manager Sol Brodsky “would call a freelancer in, a letterer or an artist to come in . . . simply because they had something that had to be corrected or changed and they needed more work than just the one production person could do”); Lens Decl., Ex. 2 41:16-20 (Thomas confirming that he understood Marvel could “request that [he], for example, do rewrites or revisions to work that you had done”); Lens Decl., Ex. 13 16:20-17:4 (Lee confirming that it “was [his] job” to “not only make assignments but also to edit and change things that other writers or artists did,” and that, “[i]f, for example, I saw some art work, and I felt there wasn’t enough action on a page, or it was confusing, the reader might not know what it was, or in a script if I felt there was too much dialogue or too little dialogue, . . . it was up to me to make the stories as good as I could make them”); Lens Decl., Ex. 3 128:23-129:2 (Lieber testifying that “of course” Stan Lee “had the right [to] make the changes to [Lieber’s] scripts”); Lens Decl., Ex. 3 133:14-134:5 (Lieber testifying that, when Lee went over his work, he would explain to Lieber, “‘Oh, you could have said this. You could have done that,’ and he’d make some little corrections” but “as time went on, he had fewer to make”); *see also* Lens Decl., Ex. 52 at 4; Lens Decl., Ex. 2 42:24-44:18, 333:18-334:5; Lens Decl., Ex. 12 113:18-114:11; Lens Decl., Ex. 3 137:11-20, 138:2-5; Lens Decl., Ex. 13 18:17-19:17, 22:11-14, 33:25-34:7; Thomas Decl. ¶ 20.

29. **Ditko, like other freelancers, did not always agree with Stan Lee's choices, but Lee, as editor, had editorial control.** Lens Decl., Ex. 59 at 2 (Ditko complaining that "Stan's dialogue was too much his personal writing style with heroes/villains. He had his formula to handle all the hero/villains material."); Lens Decl., Ex. 58 at 3 (Ditko writing that "I believe Stan loved writing those corny captions, etc. It added to reading appeal, but undercut a more serious growth of a teenagers [sic] in a heroic role"); Lens Decl., Ex. 52 at 4 (Ditko writing that "Stan's 'humor' dialogue undercut Peter Parker, S[Spider]-M[an] as a teen-ager growing up to become a professional hero like Captain America"); Lens Decl., Ex. 54 at 4 (Ditko commenting that "Stan's writing style was completely wrong for SM [Spider-Man]" and that he "treated teen-age P. Parker as a seasoned veteran with his nonsensical comic dialogue exchanges between a 'Hero' and 'villains'"); Lens Decl., Ex. 60 at 3 (Ditko remarking that "[e]ven some poor plots by Stan, others, incompetent inkers didn't sink my basic ideas for Doctor Strange"); Lens Decl., Ex. 57 at 4 (Ditko noting that it was "a mystery to [him] why no Doctor Strange covers"); Lens Decl., Ex. 53 at 3 (Ditko writing that it was "hard to understand, explain Stan's motives with his likes, dislikes In a cover, I had S[Spider]-M[an] leaping toward the Molten Man. S[Spider]-M[an] was changed to leaping across the Molton Man and off the cover. What pleases an editor? They all have their likes and dislikes."); Lens Decl., Ex. 54 at 4 (Ditko describing Marvel as having "picky editors" who adopted the creed that "[t]he editor is always right"); Lens Decl., Ex. 45 at 3 (Ditko explaining that, if he had the choice, he would do both drawing and inking, rather than having "other people . . . ink [his] pencils"); Lens Decl., Ex. 2 at 57:13-58:11 (Thomas testifying that every single artist at Marvel was "subject to the editorial discretion of the editor-in-chief" and that, during Lee's tenure, all freelancers worked "subject to Stan Lee's supervision and discretion"); Lens Decl., Ex. 13 16:8-19 (Lee confirming that he would "give instructions to the artists as to how [he] wanted

the story to go” and that it was his “responsibility” to oversee “the creative editorial aspects of the comic books that were created”); *see also* Lens Decl., Ex. 61 at 4.

30. **Marvel had final authority on the artwork, plot, and dialogue.** Lens Decl., Ex. 2 18:3-13 (Thomas testifying that all decisions were “subject to the publisher” who “was in charge of everything”—“he oversaw the writing, he oversaw the artists and the art that came in,” and “everything went through him”); Lens Decl., Ex. 2 80:12-21 (Thomas testifying that Lee “had complete authority over” dialogue, “so – to edit it, have it rewritten or whatever”); Lens Decl., Ex. 2 80:24-81:12 (Thomas testifying that Stan Lee had “complete authority” over artwork—that is, “[s]ubject to the publisher”); Lens Decl., Ex. 2 125:18-126:1 (Thomas testifying that Lee “was always the ultimate authority unless Martin Goodman stepped in, and that was mostly on covers”); *see also* Lens Decl., Ex. 12 66:13-67:2, 117:11-22; Lens Decl., Ex. 16 37:13-39:7, 42:6-18; Lens Decl., Ex. 13 16:8-13, 51:17-52:5; Lens Decl., Ex. 55 at 4; Lens Decl., Ex. 59 at 3; Thomas Decl. ¶¶ 7-8.

Doctor Strange

31. **Beginning in 1956, Marvel regularly assigned Ditko to contribute to the Marvel series entitled *Strange Tales*; he ultimately contributed to all 79 issues from February 1959 (*Strange Tales* Vol. 1, No. 67) to July 1966 (*Strange Tales* Vol. 1, No. 146), with Lee as the credited editor and writer.** Lens Decl., Ex. 25 at 25-28; Lens Decl., Ex. 63 at 18-19; Thomas Decl. ¶ 12 (“Ditko was a regular contributor to the [*Strange Tales*] series in 1959 beginning with issue 67 (cover-dated February 1959).”).

32. **Ditko’s contributions to the *Strange Tales* series—particularly in 1962 and 1963—generally consisted of penciling and inking discrete five-page comics that appeared at the end of the comic book—commonly referred to as “back-ups.”** Lens Decl., Ex. 80 (Lee and

Ditko's five-page stories in *Strange Tales* Vol. 1, Nos. 102-109); Lens Decl., Ex. 48 at 2 (Ditko reflecting on his work for Marvel back-up features in *Strange Tales* and noting that “[t]he back-up features (5-pagers) were drawn by Don Heck, Paul Reinman and me”); Thomas Decl. ¶ 12 (“Ditko was a regular contributor to the [*Strange Tales*] series in 1959 beginning with issue 67 (cover-dated February 1959).”); Thomas Decl. ¶ 13 (explaining “*Strange Tales* comics featured five-page ‘back-up’ features written by Stan Lee and drawn by Steve Ditko”).

33. As part of his ongoing work on the *Strange Tales* series and for Marvel Comics more generally, and with Lee as the credited editor and writer, Ditko penciled and inked a five-page back-up for *Strange Tales* Vol. 1, No. 110, the issue in which Doctor Strange first appears. Lens Decl., Ex. 60 at 3 (Ditko remarking that “Dr. Strange started out as a 5 page backup”); Lens Decl., Ex. 57 at 4 (Ditko noting that it was “a mystery to [him] why no Doctor Strange covers”); Lens Decl., Ex. 27 at 3 (Lee teasing Doctor Strange as “just a 5-page filler”); Lens Decl., Ex. 33 at 3 (“It is a great pleasure and privilege for the editors of STRANGE TALES to present, quietly and without fanfare, the first of a new series, based upon a DIFFERENT kind of super-hero - - - DR. STRANGE MASTER OF BLACK MAGIC! Story: Stan Lee[;] Art: Steve Ditko[;] Lettering: Terry Szenics”); Lens Decl., Ex. 14 at 8, 11 (Lee attesting that he “(together with numerous artists) created or co-created hundreds of characters and introduced them into the story lines to be published by [Marvel] [including] . . . Doctor Strange”); *see also* Thomas Decl. ¶ 13; Lens Decl., Ex. 10 335:10-336:1; Lens Decl., Ex. 71 at 20:17-23:23; Lens Decl., Ex. 2 304:24-305:6.

34. Lee named the character Doctor Strange—“Strange” because the story was published in Marvel’s *Strange Tales* series; “Doctor” to avoid confusion with “Mr. Fantastic,” another Marvel superhero. Lens Decl., Ex. 27 at 3 (Lee writing that he “[o]riginally

decided to call him MR. STRANGE, but thought the MR. bit too similar to MR. FANTASTIC—now however, I just remember we had a villain called DR. STRANGE just [] recently in one of our mags—hope it won’t be too confusing!”); Lens Decl., Ex. 41 at 5 (Lee recounting that “I gave him the name Doctor Strange—I think Stephen Strange; something like that. And Steve was the fellow who drew it.”).

35. While Doctor Strange did not have a backstory when originally published, Marvel gave Doctor Strange a fleshed out personality and origin story, a doctor who undergoes a series of tests in Tibet and develops mystical abilities to combat magical forces in *Strange Tales Vol. 1, No. 115*. Lens Decl., Ex. 34 at 3 (story belatedly laying out “The ORIGIN of Doctor Strange” in response to “a flood of letters” from fans); Lens Decl., Ex. 37 at 5 (Thomas explaining that, “when Lee and Ditko gave Doctor Strange an origin in *Strange Tales* No. 115, it bore a distinct similarity to that of Lee and Kirby’s Dr. Droom in *Amazing Adventures* No. 1, two years earlier”); Lens Decl., Ex. 37 at 8 (Thomas remarking that, “[s]ince the 1920s American movies, radio, comics, and the pulps had seated the Orient as the center of mysticism, and Marvel was no exception, with its first two sorcerers Strange and D[r]oom”); Lens Decl., Ex. 2 304:24-305:6 (Thomas discussing the large number of “comic book magicians” that “were all imitating the comic strip character Mandrake,” and noting that “[a]lmost every company had a couple of magicians, many of them with mustaches and capes”); Thomas Decl. ¶ 13 (first appearance of Dr. Strange “was published without a backstory”); *see also* Thomas Decl. ¶ 15.

36. The first issue of *Amazing Adventures*, published in June 1961, featured a five-page story entitled “I Am The Fantastic Dr. Droom,” inked by Ditko. Dr. Droom was a doctor who, just like Doctor Strange, undergoes a series of tests in Tibet and develops mystical abilities to combat magical forces. Lens Decl., Ex. 26 at 3-7; Lens Decl., Ex. 40 at 5-

8; Lens Decl., Ex. 25 at 3; Lens Decl., Ex. 36 at 2; Lens Decl., Ex. 41 at 5 (Lee recounting how before Doctor Strange, Marvel had “a character some years ago—I think we called him Dr. Droom, or something—who had been a magician”); Thomas Decl. ¶ 15 (explaining “when Lee and Ditko gave Dr. Strange an origin in *Strange Tales* No. 115, it bore a distinct similarity to that of Lee and Kirby’s Dr. Droom in *Amazing Adventures* No. 1, two years earlier” in that “[b]oth characters were magicians sharing the same backstory: doctors that travel to Tibet, undergo a series of tests, and develop mystical abilities to combat magical forces”).

37. After Doctor Strange was fleshed out and given a backstory in *Strange Tales* Vol. 1, No. 115, Marvel decided to feature the character as a regular in *Strange Tales* and more broadly across other Marvel publications, with Doctor Strange appearing alongside already-established Marvel Super Heroes and villains such as Thor and Loki. Lens Decl., Ex. 32 (Thor and Loki guest-starring in *Strange Tales* Vol. 1, No. 123 with Doctor Strange); Lens Decl., Ex. 71 at 20:17-23:23 (Lee explaining how Doctor Strange was given “dramatic” expressions and characteristics like his cape and mustache but set in Greenwich Village with real-world problems, like fears of being mugged walking down the street, “juxtapos[ing] [] the supernatural with the very mundane, every day type of existence” that Marvel characters were famous for”); Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel’s basic “formula” was to “mix fantasy with realism” with characters that “are a little different . . . sort of like continuing soap operas”); Lens Decl., Ex. 59 at 3 (Ditko writing that Lee had “some formula approach for everything . . . [as] seen with Dr. Strange’s early Stan plots, stories”).

38. Marvel never assigned Ditko to do a Doctor Strange cover and frequently had other artists ink Doctor Strange comics. Lens Decl., Ex. 53 at 3 (Ditko recounting that he “was never asked to do a Dr. Strange cover”); Lens Decl., Ex. 57 at 4 (Ditko noting that it was “a mystery

to [him] why no Doctor Strange covers"); Lens Decl., Ex. 60 at 3 (Ditko criticizing the "incompetent inkers" who inked his penciled drawings for Doctor Strange); Lens Decl., Ex. 59 at 3 (Ditko lamenting that there was a "los[s] of a consistent look" for Dr. Strange because of Lee "having someone else ink" him); Lens Decl., Ex. 2 131:1-132:8 (Thomas testifying that at Marvel the inker "usually was not the same pencil," and citing Ditko's work as an example of the penciller and inker "not [being] the same person"); Lens Decl., Ex. 45 at 3 (Ditko explaining that, if he had the choice "to draw and ink or . . . [for] other people to ink [his] pencils, he would "[r]ather do it all [him]self"); *see also* Lens Decl., Ex. 44 at 3; Decl., Ex. 55 at 4.

Spider-Man

39. **Marvel regularly assigned Ditko to contribute to the Marvel comic book series *Amazing Fantasy*³ from issue No. 1 through No. 15.** Lens Decl., Ex. 4 124:3-18 (Lee describing *Amazing Fantasy* as "a book I worked on with an artist called Steve Ditko"); *see also* Lens Decl., Ex. 48 at 2; Lens Decl., Ex. 25 at 2-3.

40. **Lee conceived of the idea for a new character named Spider-Man and devised the plot for Spider-Man's first appearance in *Amazing Fantasy* Vol. 1, No. 15.** Lens Decl., Ex. 48 at 5 (Ditko writing that "[t]he first complete Spider-Man adventure, containing the legend and story, was published in *Amazing Fantasy* #15, from Stan's synopsis"); Lens Decl., Ex. 46 at 3 (Ditko recounting that Stan Lee "create[ed] the Spider-Man name" and provided him with a "1 or 2 page synopsis" for the first story); Lens Decl., Ex. 13 74:6-75:5 (Lee testifying about "dreaming up" the idea for Spider-Man and his superpower); Lens Decl., Ex. 10 335:10-336:11 (Lee testifying that he "came up with Spider-Man," among other "main characters" that featured in Marvel's

³ The series began as *Amazing Adventures* but was renamed twice, first as *Amazing Adult Fantasy* then again as *Amazing Fantasy*.

comics, and that he would tell artists “how [he] wanted them done”); Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel’s basic “formula” was to “mix fantasy with realism,” creating characters that “are a little different . . . sort of like continuing soap operas”); Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Spider-Man, like other Marvel characters, “juxtapos[ed] . . . bigger-than-life problem[s]” with “the very simple home life and family life”); Lens Decl., Ex. 28; *see also* Lens Decl., Ex. 14 at 8, 15.

41. Stan Lee initially assigned Jack Kirby to pencil the artwork for Spider-Man’s first appearance in *Amazing Fantasy* Vol. 1, No. 15, but because Lee was dissatisfied with Kirby’s Spider-Man drawings, Lee took Kirby off the project and assigned Ditko to pencil the interior artwork and cover for *Amazing Fantasy* Vol. 1, No. 15. Lens Decl., Ex. 13 37:3-38:3 (Lee testifying that he initially “wanted Jack [Kirby] to do” the Spider-Man comic and “gave it to him” with the admonition that he “d[id]n’t want this guy to be too heroic-looking”—but Kirby’s penciled drawings “looked still a bit too heroic” for Lee “even though [Kirby] tried to nerd him up,” so he “gave it to Steve Ditko” instead whose “style was really more really what Spider-Man should have been”); Lens Decl., Ex. 13 334:14-18 (Lee testifying that “it was me who said, ‘I want to do a strip called Spider-Man,’ and I hired Jack, and I didn’t like it, and then I hired Ditko.”); *see also* Lens Decl., Ex. 10 376:3-15; Lens Decl., Ex. 48 at 3; Lens Decl., Ex. 54 at 4.

42. Stan Lee rejected (*i.e.*, did not publish) Ditko’s cover, and, instead, re-assigned the cover artwork to Kirby such that the published cover was drawn by Kirby with the interior artwork drawn by Ditko. Lens Decl., Ex. 48 at 5 (Ditko writing that he “penciled and inked the first [Spider-Man] cover after [he] inked first story” but that “Stan rejected [his] cover” and “had Jack pencil a second, replacement cover” that “became the first published cover”); Lens Decl., Ex. 47 at 2 (Ditko admitting that “it became publicly known and shown that I had previously

penciled and inked a *first S[pider]-m[an]* cover that Stan rejected”); Lens Decl., Ex. 30 at 2 (“*Amazing Fantasy* #15 unused cover art by Steve Ditko”); *see also* Lens Decl., Ex. 28; Lens Decl., Ex. 59 at 3; Lens Decl., Ex. 61 at 4; Lens Decl., Ex. 49 at 3; Thomas Decl. ¶ 21.

43. After Spider-Man’s first appearance in *Amazing Fantasy* Vol. 1, No. 15, Marvel decided to give the character his own series—*The Amazing Spider-Man*—and feature him alongside already-established Marvel Super Heroes and villains, such as the Fantastic Four, the Human Torch, and the Incredible Hulk. Lens Decl., Exs. 31A at 4-5, 20-21 & 31B at 2-4 (The Fantastic Four, the Human Torch, and the Incredible Hulk guest-starring alongside Spider-Man in *The Amazing Spider-Man* Vol. 1, Nos. 1, 8, and 14); *see also* Lens Decl., Ex. 71 at 3:25-6:09 (Lee explaining how Marvel’s basic “formula” was to “mix fantasy with realism,” creating characters that “are a little different . . . sort of like continuing soap operas”).

44. With Stan Lee as the editor and writer, Ditko penciled every issue of *The Amazing Spider-Man* during the Time Period. Lens Decl., Ex. 25 at 3-7; Lens Decl., Exs. 31A at 4-31, 31B at 2-36, & 31C at 2-17 (comic books bearing credits reflecting Ditko as the artist and Lee as the writer and editor for all issues of *The Amazing Spider-Man*).

Ditko Worked Closely and Continuously for Marvel During the Time Period

45. Marvel kept Ditko busy so that he—like other freelancers—performed much of his work for Marvel during the Time Period. Lens Decl., Ex. 25 (reflecting Ditko’s work for Marvel from the 1950s to 1990s); Lens Decl., Ex. 15 19:1-10 (Lee testifying that “there were a few artists that [he] worked with more than others,” including Ditko); Lens Decl., Ex. 2 144:22-145:22 (Thomas testifying as to Lee’s practice of “keep[ing] [freelancers] busy” so that they “always had work at hand and didn’t have much downtime where they weren’t making any money”); Lens Decl., Ex. 2 316:1-10 (Thomas testifying that Lee employed the Marvel Method to

“keep [artists] busy by giving them a plot . . . that way the artist didn’t have the downtime and lose money”); *see also* Lens Decl., Ex. 72 at 4 (recalling Ditko toiling at his artist’s desk in the early 1960s “tortured by [] deadlines”); Lens Decl., Ex. 73 at 3 (Ditko noting that Kirby was “buried under work” and needed to work fast “to keep up with the assignments Lee was throwing at him”); Thomas Decl. ¶¶ 16-17 (“I understood that Steve Ditko was performing most, if not all, of this work for Marvel”).

46. Ditko performed his work for Marvel primarily under the “Marvel Method.”

Lens Decl., Ex. 48 at 2 (Ditko describing his working method with Stan Lee on *Amazing Adult Fantasy* in 1961); Lens Decl., Ex. 52 at 4 (Ditko writing that he “had an issue/monthly sheet”); Lens Decl., Ex. 46 at 3 (Ditko explaining that Stan Lee “create[ed]” the “Spider-Man” name and then wrote the original “synopsis for the artist [(i.e., Ditko)]”); Lens Decl., Ex. 2 312:1-5 (“Stan and Steve had worked in the usual way. They would get together, talk over the story. And then whatever Stan finally approved that Steve should do, Steve would go home and start drawing.”); Lens Decl., Ex. 2 314:10-12 (Thomas testifying that Ditko’s work with Lee was “a version of the Marvel method”); Lens Decl., Ex. 9 18:9-13 (Lieber testifying that “there was usually one story for Ditko in the books and Stan liked to write that himself, so he made it up and he worked with Ditko”); Lens Decl., Ex. 13 20:7-21:25 (Lee testifying about the Marvel Method, using Ditko as an example).

47. After gaining experience working with Marvel, Marvel afforded Ditko (like Jack Kirby) more artistic discretion, subject always to Marvel’s (i.e., Goodman’s and Lee’s) ultimate authority. Lens Decl., Ex. 15 19:1-10 (Lee testifying that “there were a few artists that [he] worked with more than others,” including Ditko); Lens Decl., Ex. 45 at 4 (Ditko explaining in 1965 that he was “*allowed* to drift” from his assigned scripts) (emphasis added); Lens Decl.,

Ex. 25 (reflecting Ditko's work for Marvel from the 1950s to 1990s); Lens Decl., Ex. 48 at 2 (Ditko explaining how *Amazing Adventures* "came about because of the 5-page twist-ending stories we [Lee and Ditko] had done as back-ups in *Strange Tales*" and others); Lens Decl., Ex. 2 307:25-308:3 (Thomas testifying that *Amazing Fantasy* was comprised of little short stories by – written by Stan Lee and drawn by Steve Ditko entirely"); Lens Decl., Ex. 4 124:3-18 (Lee testifying about his collaboration with Ditko on *Amazing Fantasy*); *see also* Lens Decl., Ex. 45 at 4.

DITKO—LIKE OTHER MARVEL FREELANCERS—
WORKED AT MARVEL'S EXPENSE

48. **During the relevant period, Marvel did not purchase any work “on spec” from Ditko or any other freelancer.** Lens Decl., Ex. 2 152:1-154:7 (Thomas testifying that he could not “think of any instances” in which “artists start[ed] working on pages for a comic before discussing the plot or synopsis with Stan or the writer,” or, more specifically, in which Ditko “submitted artwork to Marvel for an existing comic book series that he hadn’t been assigned to,” or otherwise sold plots, synopses, scripts, dialogue, artwork, or characters “on spec” to Marvel); Lens Decl., Ex. 12 56:12-15 (Thomas testifying that artists did not “start working on pages before discussing the plot or synopsis with Stan or the writer”); Lens Decl., Ex. 12 57:25-58:9 (Thomas confirming that he was not “aware of any instance where a writer came in and actually started working on a new series before Stan said: Go ahead and write the series,” nor was he “aware of any instances where an artist began work on a comic book issue before getting the assignment to do the issue from Stan”); Lens Decl., Ex. 12 58:14-23 (Thomas confirming that, during the relevant period, Marvel did not “ever buy any work created on spec by freelance artists”); Lens Decl., Ex. 7 217:13-21 (same); Lens Decl., Ex. 13 41:20-42:9 (Lee testifying that he could not recall “Marvel ever buy[ing] work that was created by one of the writers or freelancers on spec as opposed to

having the material being part of an assignment that [Lee] would give him” during the Time Period); Lens Decl., Ex. 10 383:18-21 (Lee confirming that Jack Kirby did not “ever begin work on a book published by Marvel before [Lee] had assigned him that work”); Lens Decl., Ex. 6 38:8-21 (Lee confirming that he could not “recall any comic book that Marvel published prior to 1972 . . . that was created other than pursuant to a specific assignment by an editor to a writer and an artist”—at least, in Marvel’s “regular comics”).

49. Marvel paid a flat, per-page rate to Ditko for his work on Marvel assignments, as it did with other freelancers. Lens Decl., Ex. 2 141:25-142:15 (Thomas testifying that freelance writers, artists, pencilers, inkers, letterers, and colorists all were paid by Marvel on a per-page rate); Lens Decl., Ex. 4 125:15-18 (Lee confirming that, to his recollection, Ditko was paid a per-page rate “for his contribution to . . . Spider-Man”); Lens Decl., Ex. 2 292:18-293:4 (Thomas explaining Marvel’s per-page rate system, in that compensation “was based entirely on the page, whether it took ten minutes to write or an hour to write or five hours to write”); Lens Decl., Ex. 2 332:23-333:4 (Thomas testifying that he understood that Marvel had “always” used “a page rate kind of system for writers and for artists” during the Time Period); Lens Decl., Ex. 13 30:11-14 (Lee confirming that freelancers “were paid on a per page rate” during the Time Period); Lens Decl., Ex. 13 58:13-21 (same as to Jack Kirby); Lens Decl., Ex. 39 at 5 (Thomas recounting that the day Ditko quit Marvel, noting that Marvel production manager Sol Brodsky “had a memo on his desk for a \$5 a page raise for Steve, which was fairly substantial for 1965”); Lens Decl., Ex. 57 at 3 (Ditko writing “What I did with Spider-man, I was paid for. Marvel’s property.”); Lens Decl., Ex. 68A-G (freelance writer Don Heck’s payment ledger reflecting extensive entries on per-page basis for his work for “Mag. Management,” “Maga. Management,” “Magazine Management,” and “Marvel” from 1954 to 1972 and intermittently until 1994, when all entries

end); Lens Decl., Ex. 2 137: 8-16 (Thomas testifying that he was “paid on a per-page basis for [his] freelance writing assignments from Marvel”); Lens Decl., Ex. 10 396:1-10 (Lee testifying that for his work as a writer, he “was paid on a freelance basis, like any freelancer writer . . . paid by the page”); Lens Decl., Ex. 6 40:14-20 (Lee testifying that as a writer he was paid “[p]er page on a freelancer basis like all the other writers.”); *see also* Lens Decl., Ex. 2 276:7-23; Lens Decl., Ex. 3 152:5-8, 152:25-153:10, 175:7, 226:7-11, 249:7-9, 258:12-17, 290:2-5, 290:18-22; Thomas Decl. ¶ 20.

50. Marvel paid Ditko, like other freelancers, his per-page rate for his work even if Marvel required changes or did not ultimately publish the pages. Lens Decl., Ex. 2 142:21-143:15 (Thomas testifying that Marvel paid “a flat rate” and “didn’t generally pay extra for revisions.”); Lens Decl., Ex. 2 158:17-20 (Thomas testifying that he recalled “a few instances” where “Marvel paid an artist their per-page rate for their artwork but decided not to publish it”); Lens Decl., Ex. 2 297:14-20 (Thomas testifying that Marvel would pay out its per-page rates “if a new page came in that they accepted”); Lens Decl., Ex. 12 68:24-69:6 (Thomas testifying that “if an artist’s work required that changes be made, [] the artist have been paid for the original work that they submitted”); Lens Decl., Ex. 12 74:19-25 (Thomas testifying that he was still paid for “any materials that [he] submitted in [his] freelance capacity that were modified by Stan”); Lens Decl., Ex. 13 18:6-16 (Lee testifying that “[e]ven if we didn’t publish – if an artist drew a 10-page story, and the artist rate was \$20 a page, I would put in a voucher for \$200 for that artist. Now, if – and this happened rarely – but if we decided not to use that story, the artist would still keep the money because he had done the work. It wasn’t his fault. . . . Everybody was paid per page.”); Lens Decl., Ex. 10 376:16-22 (Lee testifying that “[a]ny artists that drew anything that I had asked him or her to draw at my behest, I paid them for it. If it wasn’t good, we wouldn’t use it. But I

asked them to draw it, so I did pay them.”); Lens Decl., Ex. 9 30:10-12 (Lieber testifying that he “g[o]t paid for all the work [he] did for Marvel”); Lens Decl., Ex. 68A-G (reflecting number of pages and payment amount for work on various Marvel series); *compare* Lens Decl., Ex. 35 at 9 (Thomas noting that Gil Kane was assigned to and did pencil and ink the cover of *Avengers* #37), *with* Lens Decl., Ex. 68D at 10 (reflecting payment to Don Heck for “*Avengers* #37 P&I cover”); Lens Decl., Ex. 35 at 12 (“*The Avengers* #37 unused cover art by Don Heck”).

51. As with other freelancers, Marvel did not pay royalties or provide profit participation to Ditko. Lens Decl., Ex. 2 139:24-140:20 (Thomas testifying that he did not “receive royalties” or “profit participati[on]” for his Marvel work in the 1960s and 1970s); Lens Decl., Ex. 2 142:16-20 (Thomas testifying that he “was not aware” of any 1960s Marvel freelancers “receiving royalties or profit participation”); Lens Decl., Ex. 7 225:17-226:20 (Thomas testifying that he was “typically paid before the issue hit the stands” and he and other Marvel freelancers were paid “the same page rate regardless of whether the issue they worked on ultimately sold well or not” as Marvel had a “straight page rate system”); Lens Decl., Ex. 13 42:21-43:2 (Lee testifying that Marvel freelance artists “g[o]t paid whether or not a particular book or comic was successful” as “[t]hey were paid when they delivered the artwork”); Lens Decl., Ex. 13 45:4-9 (Lee testifying that he “d[id]’t remember any royalties”); Lens Decl., Ex. 6 34:22-35:7 (Lee testifying that “[i]t wasn’t [Marvel’s] policy” and he “can’t think of any case” where any compensation was “dependent on the success of the sales of the comic book”).

52. If a comic book did not sell well or lost money, Marvel (i.e., Goodman) would ultimately bear the loss, not Ditko or other freelancers. Lens Decl., Ex. 2 140:21-141:3 (Thomas confirming that he was paid his same “per page” rate “whether the comic was a hit or a flop” and that “if a comic that [he] worked on lost money from Marvel, Marvel didn’t take that out

of [his] paychecks"); Lens Decl., Ex. 57 at 4 (Ditko acknowledging that "[p]ublishing comic book titles is a risky, competitive business and with monthly titles and with no guarantees"); Lens Decl., Ex. 13 43:3-44:2 (Lee explaining publisher Martin Goodman's perspective that he had "no guarantee" that Marvel's comic books would sell, faced months-long stretches in which he was "losing money where the books don't sell" but would not "cut [artists'] rate," and was the one "taking all the risk"); *see also* Lens Decl., Ex. 54 at 3; Lens Decl., Ex. 13 58:13-21; Lens Decl., Ex. 6 33:16-34:1; Lens Decl., Ex. 7 178:15-23, 224:24-225:15; Lens Decl., Ex. 4 129:24-130:4; Lens Decl., Ex. 3 155:12-23, 226:12-15; Lens Decl., Ex. 79 at 4.

**DITKO UNDERSTOOD THAT HE DID NOT HAVE ANY
COPYRIGHT INTEREST IN HIS CONTRIBUTIONS TO MARVEL**

53. **Ditko, like other freelancers, confirmed his understanding that he worked for Marvel on a work-made-for-hire basis.** Lens Decl., Ex. 23A at 2 (agreement between Marvel and Ditko whereby Ditko "acknowledges, agrees and confirms that any and all work, writing, art work material or services (the 'Work') which have been or are in the future created, prepared or performed by [him] for the Marvel Comics Group have been and will be specially ordered or commissioned for use as a contribution to a collective work and that as such Work was and is expressly agreed to be considered a work made for hire."); Lens Decl., Ex. 64 at 9 (Defendant acknowledging the above agreement); Lens Decl., Ex. 2 40:24-41:8 (Thomas testifying that "I understood when I came into the company that Marvel . . . would own the characters, the stories, the writing, whatever I was doing, and that was also made clear by the statement on the back of the check from the earliest days"); Lens Decl., Ex. 2 48:11-49:4 (Thomas testifying that he "didn't like creating many characters for Marvel, because [he] knew [he] wouldn't own them"); Lens Decl., Ex. 2 60:19-61:6 (Thomas agreeing that, "for the entire tenure that [he] worked with Marvel," he understood "that Marvel would have all of the rights, including copyrights and

anything that [he] worked on at Marvel"); Lens Decl., Ex. 13 at 26:22-28:6 (Lee testifying that "it was typical in the industry for comic book publishers to own the rights to the materials that were created for them for publication" during the Time Period); Lens Decl., Ex. 13 at 100:25-101:17 (Lee testifying that he "always felt the company" owned the characters he created or co-created); Lens Decl., Ex. 20 at 2 (Marvel artist Gene Colan writing that "[p]ages were stamped on the back 'work for hire' . . . In the narrow field of comic art, one either worked 'for hire' or didn't work!"); Lens Decl., Ex. 19 at 2 (agreement between Marvel and Colan that his contributions to Marvel's comic books "were created as works made for hire"); Lens Decl., Ex. 23A-E (documentation reflecting hundreds of freelancers' "express[] agree[ment]" that their work would "be considered a work made for hire."); Lens Decl., Ex. 7 355:18-23 (Thomas testifying that the popularization of "the term 'work-for-hire'" in the mid-1970s only formalized "the same general situation that had already existed").

54. Ditko acknowledged that he did not own legal rights to characters he worked on for Marvel. Lens Decl., Ex. 57 at 3 (letter from Ditko stating that he "never claimed creating Spider-Man" and that Marvel "own[s] the art pages, the published material"); Lens Decl., Ex. 52 at 3 (Ditko voicing dismay with the movie depiction of Doctor Strange but agreeing that "whoever has the rights can add and subtract from the original any way he chooses"); Lens Decl., Ex. 59 at 3 (Ditko critiquing Marvel's editorial choices, but acknowledging that, even if certain "ideas" were his, he "had no real right to them when published"); *see also* Lens Decl., Ex. 50 at 3.

55. Ditko acknowledged that he did not own copyrights in his work for Marvel, in contrast to his work with Wally Wood's "witzend" magazine. Compare Lens Decl., Ex. 56 at 2 (Ditko writing that "Wally Wood's Witzend [] gave writers, artists the opportunity to copyright their original ideas, created material when published"), Lens Decl., Ex. 61 at 3 (Ditko describing

Wally Wood as “a stand-out in many ways” including that “[h]e published witzend—where one could copyright his own ideas, creations—I took advantage of it, my Mr. A, etc.”), *and* Lens Decl., Ex. 61 at 2 (Ditko writing that “Mr. A is my copyrighted PROPERTY” and that “NO ONE, but me, has any right” to it), *with* Lens Decl., Ex. 44 at 4 (Ditko acknowledging that “Spider-Man & Doctor Strange are copyrighted by the Magazine Management company”); *see also* Lens Decl., Ex. 49 at 2 (Ditko writing that the “[m]ost important” thing about “Witzend” “was that one could copyright, own one’s creative ideas, work”); Lens Decl., Ex. 60 at 3 (Ditko writing that “Wally Wood did an astounding thing for writers and artists, an opportunity to create and copyright what one creates, protecting and able to cash in on it at any future time”); Lens Decl., Ex. 51 at 3 (Ditko writing that “Wally Wood who created WITZEND wanted a publication for creators to copyright their ideas, creations”).

**DEFENDANT CANNOT FURNISH ANY OF THE
PURPORTED “GRANTS” HE SEEKS TO TERMINATE**

56. **Defendant seeks to terminate purported grants and/or transfers of copyright allegedly stamped on the back of checks between Marvel, on the one hand, and Ditko, on the other.** *See, e.g.*, Lens Decl., Ex. 63 at 4-5, 8-9, 15, 19-20.

57. **Defendant does not have any checks from Marvel to Ditko during the Time Period and cannot attest to the language on the backs of the checks.** Lens Decl., Ex. 1 28:12-23 (Defendant conceding that he had not “seen any checks from Marvel to Steve Ditko from the 1960s” or “seen the backs of any checks from Marvel to Steve Ditko from the 1960s”); Lens Decl., Ex. 64 at 9 (Defendant identifying the purported grants as check legends “contain[ing] express purchase and assignment language,” but failing to identify any specific language); *see also* Lens Decl., Ex. 64 at 10.

58. **Marvel does not have checks from Marvel to Ditko during the Time Period and cannot attest to what they said.** Bard Decl. ¶ 3; Lens Decl., Ex. 65 at 4; Lens Decl., Ex. 2 139:3-23; Lens Decl., Ex. 12 71:25-72:19; Lens Decl., Ex. 3 153:2-154:21, 296:3-6, 297:7-13; Lens Decl., Ex. 9 31:17-32:5, 32:17-33:5.

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O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli

Daniel M. Petrocelli*
dpetrocelli@omm.com
Molly M. Lens
mlens@omm.com
Matthew Kaiser*
mkaiser@omm.com
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
Telephone: (310) 553-6700
Facsimile: (310) 246-6779

Allen Burton
aburton@omm.com
Danielle Feuer
dfeuer@omm.com
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2061

* Admitted *pro hac vice*

Attorneys for Marvel Characters, Inc.